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PROMOTION AND PROTECTION OF THE RIGHTS OF CHILDREN

Sale of children, child prostitution and child pornography

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with Commission on Human Rights resolution 1996/85 of 24 April 1996, the interim report prepared by Ms. Ofelia Calcetas-Santos, Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography.

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ANNEX

Interim report prepared by the Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography

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I. INTRODUCTION

1. At its fifty-first session, the Commission on Human Rights decided, by its resolution 1995/79 of 8 March 1995, to renew for a further period of three years the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography.

2. In its resolution 1996/85 of 24 April 1996, the Commission on Human Rights requested the Secretary-General to provide the Special Rapporteur with all necessary human and financial assistance to make the full discharge of the mandate possible and to enable her to submit an interim report to the General Assembly at its fifty-first session. The present report, which covers the period from November 1995 to August 1996, is submitted in accordance with that resolution and with reference to General Assembly resolution 50/153 of 21 December 1995.

3. During that period, the Special Rapporteur undertook one country visit. At the invitation of the Government of the Czech Republic, the Special Rapporteur visited the Czech Republic from 20 to 25 May 1996. The Special Rapporteur will submit a report on her visit and her recommendations to the Commission on Human Rights at its fifty-third session (10 March-18 April 1997).

4. The Special Rapporteur wishes to convey her thanks to the Governments, specialized agencies, and governmental and non-governmental organizations that provided her with valuable information.

II. METHODOLOGY

5. During the course of the year, the Special Rapporteur had the opportunity to participate in various seminars and conferences at the national, regional and international levels on the issue of trafficking in children, child prostitution and pornography. The main concern in all the seminars and conferences was the problem of sexual exploitation of children and its escalation. In that regard, the gravity and the global aspect of the phenomenon were stressed by Governments, representatives of intergovernmental and non-governmental organizations and members of civil society.

6. The World Congress against Commercial Sexual Exploitation of Children (Stockholm Congress) held at Stockholm from 27 to 31 August 1996 was a milestone in the protection of children and played a decisive role in raising awareness of the international community about the alarming proportions of the phenomenon of child abuse all over the world. It clearly established that there was hardly any region, country, city or village in a position to state that abuse of children does not occur within its boundaries. The existence and the magnitude of such violations of children's rights could no longer be denied, and certain questions came up again and again, such as: "what can be done?", "what can we do?", "where should we start?".

7. It is for that reason that the Special Rapporteur, for the present report, concentrates on commercial sexual exploitation of children. She starts by

presenting a brief overview of the issues relating to the sale of children, child prostitution and child pornography by establishing their causes and characteristics and then endeavours to draw a profile of both the abusers and the victims. She also briefly examines matters of general concern.

8. In response to appeals by States, non-governmental organizations, individuals and the rest of civil society for some guidance on how to combat this crucial issue of commercial exploitation of children, section V gives a sample module for action addressed to States and their partners. Section VI focuses on the justice system, both at the national and international levels, in recognition of its fundamental role both in prevention and in the redress of child exploitation and abuse.

III. BRIEF REVIEW OF CONCERNS

A. Causes

9. The diverse causes giving rise to the sale of children, child prostitution and child pornography are multidimensional, ranging from structural or systematic to individual and less organized incursions against children. Each situation usually involves an interaction of a cause with one or more of the others.

10. The causes of the problem encompass a wide range of conditions and pernicious practices inimical to the child's interests, from economic needs to socio-cultural discrepancies, including gender bias and other forms of discrimination based on race, caste or class. With regard to gender discrimination, girl children are more vulnerable to sexual exploitation because, inter alia, of the existence of a culture of violence, rape, incest and sexual and other forms of abuse against women. The discrimination extends to the systematic undervaluation of females in terms of "property" or ability to earn in the market, as well as to societal organization and the structure of power which give males greater privilege and power over females.

11. Population growth, both on a national scale and on a more localized level (such as urban migration); the erosion of the family structure resulting in the deprivation of one of the best stabilizing elements in the lives of children; and the erosion of societal and spiritual values which also adversely affects the judgements of parents, who may view the child as a factor of production or as an investment for economic reasons rather than an entity vested with substantive rights and inherent dignity, are other causes of the exploitation of children. The situation is made more deplorable by the fact that political priorities, especially concerning budgetary allocations, are frequently lopsided, with the development and protection of children considered very low in priority.

B. Characteristics

12. There are certain characteristics that typify most commercial sexual exploitation of children, including the following:

(a) It is invisible. Children drawn into the net of prostitution are for the most part hidden from public scrutiny, either physically (they are not placed on display as are their adult counterparts), or under the guise of being of age, through the falsification of identification papers;

(b) It is mobile. The invisible nature of the phenomenon necessitates not only deviation from the usual places of operation like brothels, hotels, bars, and the like, but also frequent changes in the areas of operation;

(c) It is global. While the gravity of the situation for children may vary from region to region or from country to country, reports show that this kind of child abuse exists in practically all corners of the world. The contagious nature of the phenomenon causes the blurring of lines between sending and receiving countries. Some countries that used to be considered supply countries are becoming demand countries as well. Likewise, children of countries heretofore considered to be on the demand side, are starting to be victimized either in their own country or elsewhere;

(d) It is escalating. Fear of AIDS and other sexually transmitted diseases, inter alia, leads to a greater demand for younger sexual partners. Children used to be substitutes for adult prostitutes; now, however, there is marked increase of preference for children over adults, pushing up the worth of children in the sex market;

(e) It is a highly profitable business. This is borne out by the fact that it involves not only ad hoc or individual "entrepreneurs", it is often conducted by international profiteers using systematic methods of recruitment within a highly organized syndicated network, which is often also involved in other criminal activities such as drug dealing.

C. Profiles of the victims and the abusers

13. Knowledge about the profiles of both the child victims and the sex exploiters and the understanding of their characteristics are key elements in any attempt to form policies and plans of action in the campaign to end child abuse and exploitation. They are important factors in raising public awareness and in any action for attitudinal change, as well as for any strategy regarding law enforcement, prevention, education, training, the rehabilitation of the victim and the treatment of the offender.

1. The victims

14. All over the world, children are getting to be more and more vulnerable to commercial sexual exploitation. Children's vulnerability generally stems from the circumstances of their family, either because they belong to marginalized or broken families, or have been abused in the family, or because they are the children of women involved in the sex industry.

15. Street children are particularly vulnerable either because of peer pressure or because it is a means of survival. Children in orphanages and local

authority care are often also subject to sexual abuse by adults occupying positions of trust or authority. They are easy targets for abusers under a fiction of consent.

16. The growing incidence of force or kidnapping as a means of drawing children into the net of exploitation and abuse likewise poses a serious threat to children who may not belong to marginalized groups.

2. The abusers

(a) The exploiters

17. As the sex market has changed and developed, the traditional pimp and the brothel "Madam" are no longer the only ones supplying child sex clients. Getting more and more involved are exploiters in the upper echelons of the industry, such as leaders and members of organized crime, traffickers, middlepersons, tour organizers, corrupt administration officials and, unfortunately, also parents and caretakers of children.

(b) The clients

18. Child sex clients have been identified as coming primarily from the following groups: paedophiles, preferential child sex abusers or regular situational customers, local prostitute users, tourists, travelling businessmen, migrant foreign workers, military personnel, public workers in isolated places and others.

19. The term paedophile, in the clinical sense, refers to an adult who has a personality disorder that involves a specific and focused sexual interest in pre-pubertal children. The majority of paedophiles are male, but the number of female abusers is growing. Though some paedophiles have a focused interest in either boy or girl victims, others have no gender preference. The term preferential child sex abuser refers to individuals whose preferred sexual objects are children who have reached or passed the age of puberty. Such abusers are usually, but not exclusively, men, and their victims may be either male or female. The situational child sex abuser is the adult man or woman who sexually exploits children not because they have a focused sexual interest in them, but rather because they wish to "experiment" with child sexual partners.

20. Soldiers and other members of the military, both local and foreign, have long represented a substantial portion of the demand for commercial sex. The relationship between the military and prostitution has been illustrated by cases of soldiers paying for the sexual services of orphaned, abandoned or displaced girls, who are often held in brothels under conditions of virtual slavery and forced to sexually service off-duty local soldiers.

21. Sex tourists, as individuals entering into sexual exploitative relationships with local women, men or children while travelling for leisure purposes, do not represent an homogeneous group. Though the vast majority are heterosexual males, there are also homosexual and paedophile sex tourists. In many areas, sex tourists represent the major source of demand for children in

prostitution. Use of prostitutes by travelling businessmen is also widespread. Providing "call girls" and/or visits to brothels often forms part of the hospitality extended by business associates and friends.

3. Motivations for child sexual abuse

22. The Special Rapporteur will limit herself to the examination of the motivations for child sexual abuse in a commercial context:

(a) Some clients use prostitution to satisfy what they imagine to be a biological need for physical contact. Many men who do not have, or are separated from, a regular non-commercial sexual partner often believe that commercial sex is necessary to their physical and psychological well-being. They often prefer to use girls between the ages of 14 and 20, since girls in this range tend to conform more closely to cultural ideas of feminine beauty;

(b) Misconceptions about the transmission of AIDS and other sexually transmitted diseases may encourage men who use prostitutes to select younger girls in the mistaken belief that they are less likely to contract illness from them. This factor is mainly responsible for the spiralling effect of demand for younger and younger children;

(c) Some men use prostitution in order to obtain a sense of camaraderie with male colleagues or friends, or as a result of peer pressure aimed at affirming a shared masculine identity and a heightened sense of belonging. Male friends also often travel together to engage in sex tourism, and the presence of colleagues or friends encourages them to break taboos around child sexual abuse;

(d) Assertion of masculinity and power is also one of the reasons why some clients resort to child prostitutes. Because child prostitutes are often found at the cheaper end of the commercial sex market, less affluent men in terms of social and economic power often have greater "consumer" power in relation to child prostitutes, and are thus likely to become situational child abusers, even if they have no specific sexual interest in children;

(e) Commercial sexual abuse of children sometimes results from a compulsive urge to perform sexually transgressive acts and/or to exercise sexual power over extremely vulnerable, powerless, objectified and/or degraded individuals. These clients seem to feel sexual and psychological pleasure from the knowledge that they are breaking the law, flouting the moral codes they have been taught, or in some way transgressing rules and values and getting away with it;

(f) It also happens that some clients do not see themselves as users of children in prostitution because the modus operandi may be different in the countries they visit. The prostitute-client exchange, especially in the informal sector, could be different from that which takes place in the country of the client, giving ground to the interpretation of the whole process as confirmation of a mutual attraction rather than as a commercial sexual encounter;

(g) In certain cultures, there is widespread belief that having sex with a virgin will enhance the virility of men or cause longevity.

23. The motivations for child sexual abuse in a non-commercial context should also be closely examined, particularly the cognitive distortions used by abusers in both commercial and non-commercial aspects to rationalize and justify their acts of abuse.

4. Effects on children

24. Any kind of sexual exploitation can be devastating to a child, but commercial sexual exploitation afflicts children with horrors it would be quite difficult for even the most hardened adults to imagine. The long-lasting and deep-seated effects cover the entire range of the personhood of the child, physical, mental and psychological. The feeling of loss is all-pervasive, loss of their innocence, of their childhood and of their sense of self.

(a) Physical effects

25. Living conditions for the children in brothels or in the streets are almost always unsanitary and cramped. Food is often inadequate and medical care non-existent. Physical abuse by the clients, pimps or brothel owners is not uncommon as a means of subjugating the child or to force miscarriage for children who are pregnant.

26. The children's susceptibility to sexual diseases cannot be overemphasized. The younger the children are, the more prone they are to damage and infection. There is little to indicate that safe sex is practised with children. Men precisely seek out children because of the belief that they are free from sexually transmitted diseases and AIDS, which may encourage them not to use condoms. Even the children themselves often do not encourage the use of condoms because they cause greater pain.

27. Other physical complaints range from abdominal pain to sores, headaches, bodyaches, fevers and colds, and a general feeling of malaise.

(b) Mental and psychological effects

28. The effects on the mental and psychological health of children subject to commercial sexual exploitation are not easy to diagnose, and can be healed only through expensive and prolonged treatment. The following are some of the more common manifestations of mental and psychological disorder observed among abused children:

(a) Serious depression coupled with suicidal tendencies;

(b) Devastated self-esteem;

(c) Distorted perceptions of sex;

(d) A great sense of loss and sacrifice, without any corresponding gain, especially for children in situations of bondage;

(e) Impaired learning ability and attention and memory span;

(f) Escapism through dissociation, sleep or fantasy;

(g) Utter dependence on the pimps and exploiters, fostering a sense of alienation and complete servility;

(h) A deep feeling of guilt, especially for those who were not kidnapped, forced or coerced but rather lured into prostitution and pornography;

(i) Other behavioral manifestations, such as self-mutilation, aggression both physical and sexual, excessive emotional attachment and attention-seeking antics;

(j) Inability to trust anybody;

(k) Multiple phobias, such as fear of sex, fear of being sold again, fear of men, fear of violence, fear of new care-givers, fear of ostracism and even fear of returning home.

IV. MATTERS OF GENERAL CONCERN

29. The following additional matters of general concern also deserve attention:

(a) Adult prostitution and prostitution involving children are two very distinct issues. While it may be granted that States may have the right to determine for themselves whether or not to legalize adult prostitution, that option is not open to them as far as children are concerned. There should be no ambivalence in declaring the illegality and immorality of commercial sexual exploitation of children. Neither should there be any doubt that in this particular aspect, children are never the perpetrators of the offence, but the victims thereof. Likewise, there should be no distinction drawn between children who are perceived to enter prostitution voluntarily, and those who are forced, deceived or misled. Voluntariness almost never implies free choice, but rather lack of choice, taken in the context of the attendant political, economic, cultural or social circumstances;

(b) Response processes should not further victimize the child. Multiple victimization can happen at practically all levels of response in the hands of untrained and insensitive assistance. Even programmes conceptualized to create heightened awareness regarding the existence of the abuse can backlash to cause damage not anticipated. The Special Rapporteur remembers having seen a video film on pederasty. The well-intentioned project, while it achieved success in shocking people into awareness of the existence of the problem, also catapulted the boys who were featured therein to instant stardom, generating demands for their services never before experienced;

(c) Coherence is another very important factor to consider in the conceptualization of national policies, programmes and strategies. This requires the integration of concerns of children in all the aspects of government activities, so that children's concerns are not unwittingly put aside in the effort to find solutions to other problems. Coherence should likewise be the guiding principle at the international level, including in the United Nations system. The peacekeeping activities of the United Nations, for example, should not provide a fertile ground for germination of commercial sexual exploitation of children in the name of providing soldiers with rest and recreation. Another example is in the elimination of child labour, which should not result in driving children from the proverbial frying pan into the fire. For while having children trapped in certain unhealthy working conditions may be far from ideal, simply closing this door to children without providing them with viable alternatives may drive them deeper underground into the much more hazardous world of commercial sexual exploitation;

(d) Pornography is now a virtually unexplored field, and the obsolescence of existing legislation, as the result of modern technology, necessitates upgrading the review of laws in the order of priorities.

30. Challenges to a study on child pornography include the lack and/or obsolescence of any uniform definition of what child pornography entails, lack of data regarding the production and distribution of child pornography in many parts of the world and shifting global patterns of production and consumption of child pornography. Furthermore, the development of home video equipment and computer technology has revolutionized the international production and distribution of child pornography. Expanding international access to increasingly inexpensive technology has transformed child pornography into a sophisticated industry. Computer alteration of images and the potential for creating computer-generated pornography pose formidable challenges for courts and law enforcement officials worldwide.

31. One other issue on pornography deserving serious study and research is the impact of pornography on children, not as the subjects thereof, but as the viewers, or in a sense, the clients. To date, all efforts to address the issue of pornography are concentrated on the child being the subject thereof. In today's reality, however, where the children are generally more computer literate than the adults, and in developed countries have ready access to computers in their day to day lives, the effect of unsupervised exposure to pornographic materials on young minds should also be looked into. Monitoring access to pornography is now virtually an impossibility for parents and caretakers of children, necessitating some control mechanism elsewhere.

V. RECOMMENDATIONS FOR TRANSLATING WORDS TO ACTION

32. Making the commitment to do something to combat the sale, prostitution and pornography of children is not difficult. Governments accede with alacrity to measures to protect children, as shown by the almost universal acceptance of the Convention on the Rights of the Child in such a short period of time.

33. Translating the commitment into action, however, is quite another matter. Most Governments, non-governmental organizations or individuals wanting to do their part are daunted by the magnitude of the problems and find difficulty in even making a start in their search for solutions. Recommendations on the steps that may be followed to address the problems more systematically are set out below. They are not intended to be viewed as the only formula that will work, but rather a prototype that can be changed, modified or improved upon as the situation warrants.

A. Analysis of causes and problems in situ

34. A good starting point in problem-solving is the analysis of the cause or causes of the concern and the problems that may hinder speedy solutions in the context of the place concerned. Ideally, the analysis should be based on extensive information-gathering, surveys and studies that go beyond the anecdotal so that there can be a more precise targeting of goals and courses of action.

35. Most Governments do not have the research facilities to conduct these studies. However, it is quite possible that other readily available sources of information may be tapped, such as non-governmental organizations working in the field, schools, etc. The analysis must be concentrated on the situations prevailing in the area (region, country, province, city, town, etc.). No two situations are exactly alike, and strategies may work in one place and not in another.

36. Certain countries have been identified as countries where the proliferation of the sale of children, child prostitution and child pornography exist, and they are often referred to as the "supply" side of the problem. For countries so situated, therefore, the main goal would be to stop the source of the supply, that is, the child victims. On the other hand, other countries' involvement may not be in having their own children be the target of the abuse, but in their being the source of the abusers. They are thus referred to frequently as the "demand" side of the problem. For those countries the main goal would be to eliminate the demand.

37. The globalization of the phenomena of the sale of children, child prostitution and child pornography, however, blurs the lines between the countries that have heretofore been identified as the supply side and countries considered to be on the demand side. Developing countries, which had been considered to be the main sources of abused children, also have their own share of abusers, whereas developed countries are beginning to wake up to the fact that they not only have abusers who prey on children in different parts of the globe, but that their own children are now being drawn into the net of exploitation and abuse.

38. It becomes essential, therefore, for States to look for solutions both to stop the supply and to eliminate the demand.

39. It is likewise important that the identification of the victims of child abuse and exploitation and the prevalent causes for their involvement be

studied, again in the context of the State concerned. While it is recognized that commercial sexual exploitation of children involves not a single cause but a combination of causes, there may be divergence in the main cause in one country from that in another. Most children in developing countries get involved owing to financial needs, be it for survival or for consumer goods.

40. There must be a determination of at least a general picture of the percentage of girls involved as compared with the percentage of boys, especially in prostitution and pornography. There are differences in the patterns related by boys from those related by girls in the modes of recruitment, the degree of involvement, the manner and places of operation, and in the ability to extricate themselves from the situation. Reports even suggest that there may be differences in the effects of the abuse on girls and boys.

41. For instance, there seems to be a wide divergence in the entry point of girls into prostitution and that of boys. Reports from all over the world show that most girls are either forced, coerced or led into prostitution by deceit or other means. Trade in girls is a highly profitable activity involving ruthless traders. The girls are almost always under the strict control of somebody - their parents, the pimps or the brothel owner - and have much greater difficulty in extricating themselves from the pernicious practices afflicting them.

42. On the other hand, while there are reports on the growing involvement of boys in prostitution, their participation so far is rarely coercive, showing a greater degree of "voluntariness". Peer network influence is one of the main reasons that boys are involved in prostitution or pornography, and they usually band among themselves for mutual protection.

43. Strategies, both for prevention and intervention, must therefore be conceptualized keeping these gender-based disparities in mind.

44. Knowledge as to the composition of the clientele *in situ* is a must in planning strategies to eliminate the demand. Where the clients are mostly sex tourists, the programmes of action would be different from situations where, say, the military personnel are the ones involved.

B. Inventory of resources

1. Statutory framework

45. All programmes and strategies must take into account the legal framework of the country. It is essential that there be a review of all existing laws having an impact on the welfare of children in general, and exploited and abused children in particular. This would also lead to a determination of gaps and inadequacies, which can, in turn, be the basis for recommendations for legislative action.

(a) Substantive laws on the sale of children, child prostitution and child pornography

46. Scrutiny of the existing laws for the protection of children should be made in order to determine recommendations for reform. The following are some of the questions that must be answered:

(a) Are there laws penalizing the sale of children? Child prostitution? Child pornography?

(b) What are the elements of each one of these crimes?

(c) Who is subject to criminal culpability for each of these offences? What are the penalties imposed by law on these offences?

(d) Is the child involved in prostitution and/or pornography subject to penal sanctions?

(e) What are the gaps or inadequacies in the existing legislation?

(f) What are the laws discriminatory to children and women?

(b) Procedural rules

47. Procedural rules for the handling of the child from the time a report is made of the incidence of abuse should be examined to make sure that the child is protected at all stages of the process. The following questions would be helpful:

(a) Who can file the case?

(b) Is the dignity and sense of self-worth of the child maintained?

(c) Is there confidentiality, especially of the identity of the child in all stages, and avoidance of sensationalism?

(d) Is the child entitled to support in the course of the proceedings, including family support, legal assistance, support from a social worker or child psychologist?

(e) Are questioning and cross-examination procedures empathetic and considerate to the child, taking into consideration the child's age, background, intelligence and education?

(f) Are there rules to preclude undue influence on the child?

(g) Is the safety of the child during the proceedings and thereafter ensured?

(c) Reporting mechanisms for abuse

48. The public in general, and children in particular, have to be aware of avenues of recourse open to abused children. They have to be informed of the importance of timeliness in bringing the abuse to the attention of the authorities. Easy access to complaint mechanisms is vital in order to encourage recourse to the justice system. The following questions should be asked:

(a) Are hot lines for children available?

(b) If so, are children properly informed of the existence of these telephone lines that they can use in case of problems?

(c) Who are the people receiving the calls? Are they trained to deal with sexually abused children?

(d) In schools, is there any structure assisting child victims of abuse? How about in communities?

(e) Are there police officers properly trained in attending to the complaints of abused children?

(f) Are the children sufficiently informed about where to go in case of violation of their rights?

2. Determination of available funds

49. Any action for combating exploitation of children should be strengthened by the will of its initiators coupled with the financial means to implement programmes of action. Before any measures are implemented a review of the funds available is imperative.

(a) National budgets

50. Children's issues frequently used to be excluded from political priorities for Governments owing, obviously, to the reality that children are not voters. The Stockholm Congress and recent international developments did much to raise the consciousness of States on the issue, giving a much-needed push to motivate political will and upgrade children's concerns in the order of priorities. This upgrading would perforce necessitate an increase in their share in the national budget. Despite this, however, most developing countries are still hamstrung by lack of funding, requiring careful and rational programming in order to optimize available resources for feasible and more practical strategies.

(b) Other sources of funding

51. Other possible sources of funding should be tapped to supplement the resources presently available. Partnerships with funding organizations, both on the national and international levels, often yield fruitful results. Non-traditional sources, if sensitized, could also contribute to particular projects, which could be easily evaluated.

3. Identification of possible partners

52. At the national level, there is a need to broaden the range of catalysts that can help to protect children. Governments can never tackle the problems alone. While more effective performance by government agencies should be called for, cooperation and coordination with non-governmental organizations and the rest of civil society is equally imperative. Parents' organizations, religious groups, community development organizations, children and youth organizations, professional associations, and the mass media are some of the non-governmental entities that can provide help. Chambers of commerce and other business groups may also be regarded as a source of assistance whose potential has yet to be harnessed for the protection and development of children.

53. Particular attention should be paid to non-governmental organizations that are already involved in children's concerns. Non-governmental organizations would be invaluable and indispensable partners and the respective mandates and activities of each one should be inventoried so that they can be harnessed in social mobilization schemes with optimum benefit. Non-governmental organizations usually have training in research and investigations and the trust of the community in most areas, and they are not constrained by pressure of higher authorities.

C. Prioritized strategies for action

54. A national agenda to prevent and combat child abuse and exploitation should be developed within a time-frame of activities. This would necessitate a prioritization of strategies for action. First, the main thrust the Government wants to adopt would be determined - whether focus should be on preventive or remedial action, or both.

55. Much had been said of the value of prevention. Preventive measures are generally considered to be not only cheaper than remedial ones but are also easier to implement. Their protective mantle covers a greater number of children. There is strong evidence to indicate that children who are subject to abuse often grow up to be themselves the abusers of children. Preventive measures will therefore have a positive impact not only on today's children but also those of future generations.

56. Remedial measures are generally much more expensive, and the success ratio of recovery and reintegration has not proven to be encouraging. There are certain crucial reasons why most social workers are frustrated in their efforts to reintegrate the children in prostitution; among these are the lack of viable income-producing alternatives, fear of ostracism, the high cost of medical and psychological assistance required, and the length of time for the recovery period.

1. Approaches to prioritization

57. Once a determination has been made as to whether the main thrust of the programme will be preventive or remedial, the next step is to prioritize the strategies. Different approaches have been used by Governments in listing their schedules for implementation. Prioritization enables the Government to focus on certain issues at a given time, so that it does not fall into the trap of trying to address all of the problems at the same time. Shotgun solutions to all the problems will cause greater difficulties both in the manner of implementation and in the monitoring systems to measure success.

58. Prioritization may be based on certain criteria, such as first things first, worst things first or catch as catch can. Each one of these approaches may have its pros and cons, but whatever standard is adopted, it should be based on its "doability" and implementability. It should enhance a feeling of gratification, which would encourage intensification of further efforts.

2. Networking with chosen partners

59. After the setting of priorities, the next logical step would be to draw in partners who will be allies in the implementation of the chosen action. Should the first priority be an information drive on the issue, for example, the media has to be drawn in as an indispensable partner. Other sectors may be drawn in as well, such as education, community groups and the like. It is equally crucial that the chosen sectors be first sensitized to the needs of the children to be protected and that attention be given to a systematic allocation of responsibilities to each one of the partners.

VI. SPECIAL FOCUS ON THE JUSTICE SYSTEM

60. The justice system is among the three catalysts, the other two being the media and education, that the Special Rapporteur has identified as having crucial roles to play in the fight against child abuse. It is reiterated that this is not intended to exclude other sectors that have just as important an impact on the problems. This is simply the Special Rapporteur's way of tackling the issue in a more focused manner.

61. The justice system can be a forceful ally of children on at least two levels: on prevention of child abuse and exploitation, and on avoiding secondary victimization of children in its response processes.

62. With regard to the preventive aspect, it is a known fact that abusers of children, local or international, proliferate where the perception is that the justice system is ineffective, or corrupt or insensitive to children's concerns. Conversely, where the wheels of justice in a country are perceived to be speedy, incorruptible and particularly protective of children, child abusers perforce have to look elsewhere for their targets of abuse and perversion.

63. The first step in utilizing the justice system as a preventive tool, of course, is getting the child, or those acting in his or her behalf, to complain.

Unhappily, however, despite appeals for strengthened children's rights, a child today often looks at the justice system as an enemy, rather than as a friend. This is because the justice system often fails to regard the child victim as a major claimant to protection in the legal processes.

64. Until very recently, protective laws and mechanisms, both on the national and international levels, have addressed mainly the needs of the accused. Very little attention has been paid to the equally important, if not more important, needs of the victim, and to the even more specialized needs of the child victim.

65. The cause of justice demands a proper balance between the rights of the child victim and the accused. This can best be achieved, at the very least, by measures to prevent secondary victimization of the child in the hands of those from whom he or she is seeking redress. The entire justice system is rife with entry points for further victimization, from the time of the report up to the time of, and even beyond, sentencing.

66. It is in this light, that the following discussion focuses on some problems that may have to be addressed in order to achieve the goals of optimizing the capability of the justice system to be a strong deterrent to child abuse and to avoid further adding to the trauma and stigmatization of the child victim.

A. Problem areas at the national level

1. Law enforcement

67. Law enforcement is a potent tool for prevention. Community policing, active surveillance and raids of sex markets, as well as high visibility of police officers as protectors of children can send a strong and convincing message to the general public, to the victims and to the abusers. A sustained and consistent drive against child abuse renders the length and severity attached by law to the offences of secondary importance.

68. The police are normally the first contact of the child with the justice system. The first impression the child gets in the hands of the police sets the tone of trust or mistrust, cooperation or withdrawal, and a feeling of security and elation that at last somebody cares or a feeling of bewilderment and despair that the ultimate recourse under the rule of law is not made available to them. Some of the problem areas in law enforcement are the following:

(a) The lack of a clear and comprehensive legal protocol, especially in the area of sexual abuse and exploitation, necessary to provide a strong base for action and for quality investigation and law enforcement. The lack of clarity in the law as to who are criminally culpable, for example, may lead to confusion in the detection and apprehension of abusers;

(b) The fear of transgressing into what may be considered to be purely domestic matters; the thin borderline between parental rights and discipline on the one hand and exploitation and abuse on the other, combine to deter effective zeal in the investigation and prosecution of abusers;

(c) Delayed or late reporting of abuse often affects the credibility of the child. Essential evidence is often lost resulting in the failure to substantiate the elements required for an offence. If the child has already taken a bath, or has had his or her clothes washed, or let the bruises and other marks fade before reporting the incident, the police may question the veracity of the complaint;

(d) False reporting likewise hampers the police from effective law enforcement. One very common misrepresentation is made with respect to the age of the child, which may mean the difference between effecting an arrest or letting the offender go;

(e) Crimes pertaining to the sale, prostitution and pornography of children are not yet considered mainstream crimes. They are usually sidelined by what are perceived to be the more urgent and dramatic police functions like investigation of murders, controlling riots, and detection and apprehension of drug dealers, among others;

(f) The police are normally well-honed in the abuser-centred but not in the victim-centred approach. As already stated above, while the rights of the accused are already deeply ingrained not only in international documents like the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), but also in most national laws, the rights of the victim have yet to be similarly addressed. Insensitive handling by indifferent or untrained police officers gives rise to secondary or multiple victimization of the child, which may have more serious repercussions than the abuse being complained of. Disregard for the dignity of the child in the process of evidence-taking may aggravate the agony already suffered. The same thing happens when the identity of the child victim and the confidentiality of the proceedings are not respected;

(g) The lack of resources for the law enforcers presents a major stumbling block in investigation and prosecution. The present trend towards globalization of the concerns of the mandate, and the involvement therein of highly sophisticated syndicated operators very often leaves the police far behind, making detection and chase very frustrating tasks;

(h) One of the factors causing discouragement on the part of law enforcement officers is the refusal of the victim to talk. Even where an abuse is brought to the attention of the police, it is often inevitable that a statement by the child victim is needed before the police will even consider the filing of the case. Fear of reprisal, however, especially where the offenders are the parents, deters the child from making the statement, leaving the police with no choice but to desist from further action;

(i) Quite often, police raids are conducted more as a hunt for children violators rather than an investigation into their abusers. The success factor of the raids is frequently measured by the number of children rounded up as a result of the raids, not on the abusers arrested or on the children helped.

2. Prosecution

69. After the police officer is satisfied that a crime has probably been committed, the case should be forwarded to the prosecution for further evaluation as to whether it can be filed in court. Here, again, there are problem areas:

(a) The inadequacy of the evidence-gathering and statement-taking processes by the police may cause the prosecution either to dismiss the case or to completely disregard statements given by the child victim to the police, necessitating the retaking thereof, thereby compounding the trauma already suffered, especially where the prosecutor is untrained or insensitive to the rights of the child;

(b) Coercion by or undue influence of persons having care of the child victim cause the child to retract statements already given to the police or to simply disappear and make themselves unavailable for the proceedings, weakening the case if not totally rendering impossible its filing with the courts.

3. The courts

70. Appearing in a court of justice is an experience not relished by most adults, no matter how educated or how sophisticated they may be. It is not surprising therefore that children feel absolutely petrified by the thought of having to appear before intimidating people in awesome surroundings. Some of the problem areas include:

(a) The conduct of the testimony of the child, both on direct and on cross-examination. Getting the child to render a credible recollection of events is one of the challenges the court must face. Delays in getting the case to trial, the lack of family or institutional support, the age of the child, the mental and psychological damage suffered, and his or her lack of education may all conspire to undermine the quality of a child's evidence;

(b) Corollary with the above is the equally vital challenge of avoiding further damage and trauma to the child in the process of testimony-taking, having in mind the fact that the procedural rules in most countries apply indiscriminately to adults and children alike. Lack of special measures for the child witness may expose him or her to retaliation by the offender. It may also give the child the feeling that he or she is the one on trial resulting in guilt and embarrassment. The feeling of not being believed can further erode whatever is left of the self-respect of the child;

(c) The problem of how to manage the child victim to ensure his or her presence when needed also applies to the trial stage;

(d) Difficulties in reconciling the rights of the accused with the rights of the child victim to protection. Some of the rights of the accused are guaranteed under the constitutions of many countries. These rights include:

(i) The right to bail of the accused. In countries where the offence is not serious enough to deprive the accused automatically of bail, it has been seen that child exploiters arrested in a foreign jurisdiction are very likely to jump bail;

(ii) The right of the accused to confront his or her accuser. This right runs counter to the fundamental right of the child to concealment of his or her identity and the confidentiality of the proceedings;

(iii) The presumption of innocence in favour of the accused. This presumption places the burden of proof on the child, which is often very difficult precisely because of the invisible and mobile nature of the abuse and given the improbability of actually finding a criminal in the very act of abusing a child;

(e) The inequity caused by the dearth of resources of the child as compared with the resources available to the accused in most instances. This inequity has telling effects even on the quality of legal service;

(f) There is a serious problem of recidivism, particularly for offenders who are impelled by compulsive behaviour. Penalization may not always be the answer. Where child abuse is caused by compulsive and maniacal psychological illness, for example, the length of sentence of imprisonment would be absolutely irrelevant and will not result in any remorse sufficient to deter a future repetition of the same offence. Two issues arise from this situation: first, whether the psychological deficiency exculpates the offender from criminal culpability, and second and more importantly, what course of action can be taken to ensure that such compulsive or maniacal behaviour does not give rise to victimization of other children.

4. Recovery and reintegration

71. Recovery or rehabilitation are much more expensive, more difficult to implement and oftentimes fail to yield effective and sustainable results. They are the most difficult aspect of the entire process, both for the victims and for those helping them. The most efficient rescue programmes would be of little value unless coupled with some structure that would assist in the healing process of the child, physically, mentally and psychologically.

72. Attendant problems include the following:

(a) Recovery and reintegration is time-consuming and very expensive. A wide range of services would have to be included: food and shelter, placement in schools, skills training, medical and psychological help, and possible placement in foster families;

(b) While it is appealing to talk of a hope for reintegration into the family, especially in the case of child sex workers, there are several complications. For those children who have been raped by a parent, step-parent or relative, or have been sold by their own families, it is difficult to contemplate a return. It is not unusual to hear of girls who repaid debts, went

home and were sold again. Ostracism from their families and communities is also an added factor preventing children from returning home;

(c) There is generally a lack of awareness regarding the imperative need for treatment and recovery of victims. They are therefore invariably left to themselves, especially after the termination of the case. In instances where the prosecution of the case results in conviction of the offender, the victim is deemed to have received redress. Very often efforts at rehabilitation are concentrated on the offender rather than on the child victim.

B. Recommendations at the national level

1. Law enforcement

73. The police force, as a system, and its internal organization must change and adapt itself to the care of children. The seriousness of offences against children must be acknowledged, both through formal policy of the force and through informal internal norms. This change has to be visible in terms of programmes and in terms of the exercise of authority and power.

74. As it is not likely to be feasible for all police officers to be trained in handling children, special police officers should be appointed to look into cases involving children. There should be training programmes to sensitize and motivate them to effectively intervene in this area. Crimes against children must be addressed by adopting a victim-centred approach. Training should be institutionalized and regular, not ad hoc or sporadic activities. A police manual on procedures in handling children should be adopted to ensure avoidance of secondary victimization during the investigation process.

75. Where there is perceived corruption or inefficiency in the police force, powerful information campaigns should be conducted to create the groundswell of popular indignation necessary to promote reform.

76. Mobile units for the surveillance of the places of usual operation where children are at greater risk should be set up and made operational.

77. Laws aimed at protecting children should be enforced more effectively. Law enforcement officers should be provided with more incentives to improve their performance, and should be encouraged to work in coordination with, and not in opposition to, non-governmental organizations.

78. The police should involve the community and encourage its active participation in the law enforcement process, especially in monitoring the abuses and exploitation of children.

2. Criminal procedures in the courts

79. The rights and interests of children should be safeguarded throughout the proceedings, while respecting the rights of the accused.

80. The confidentiality of records and the respect for the fundamental right of the child victim to privacy must be ensured by avoiding the disclosure of any information that could lead to their identification. Some of the measures to protect the identity of the child are as follows:

(a) The court should give the child victims pseudonyms to conceal their identity;

(b) Records such as negatives, audio tapes and photographs should, as a general rule, be destroyed, subject only to certain exceptions as the court may determine, in which case, those not destroyed should be sealed and should not be available without the permission of the Court.

81. The physical and psychological well-being of the child victim may be sufficiently important to outweigh the right of the accused to confront his or her accuser. Thus, during the hearings, sight-separation procedures should be observed through any of the following means:

(a) Through one-way closed circuit television testimony;

(b) Through a two-way system in which the child witness is permitted to see the courtroom and the accused on a video monitor and in which the judge and/or the jury are permitted to view the child during the testimony;

(c) By deposition, if the court is satisfied that the attendance before a court of the child victim would involve serious danger to his life or health.

82. It must be ensured that the conditions at the hearings involving child victims respect the dignity of the children and do not exacerbate their trauma.

83. Access should be improved to legal and other remedies through the joint cooperative action of the formal legal institutions and quasi-legal or non-formal personnel, such as non-governmental organizations and community leaders, who can help to safeguard and protect children at the grassroots level.

84. Dialogues should be promoted between all relevant agencies involved in the justice system with a view to preventing problems, protecting children and providing remedies where necessary. Improved networking is essential on all levels, including the members of the community and the mass media.

C. Problems at the international level

85. The prosecution of international crimes against children is extremely difficult, expensive and time-consuming. Not only are the substantive and procedural issues endemic, the national concerns and priorities may also be dissimilar. Differences in language and legal systems and bringing the witness(es) from abroad further complicate the issue. Some of the pressing problems on the international level are:

(a) Disparity in the laws of the different countries concerned may act as an insurmountable barrier to effective prosecution of the case. The substantive

provisions may relate to the elements of the offence, the penalties imposable therefor and the prescriptive periods for prosecution. For example, the use of a real child as a subject may be one of the elements for the crime of child pornography in one country, while in another visual imagery may be sufficient to sustain a conviction. Countries adopt different strategies in the penalization of offences involving abuse and exploitation of children. Some classify the crimes as minor, thereby making them more susceptible to successful prosecution, whereas others classify them as serious and even heinous, thereby making them susceptible to the imposition of a grave penalty. This imposition of a grave penalty may work as a deterrent on the national level where the offender is also a citizen of the same country, but it may have an adverse effect where foreigners are involved. International cooperation is difficult to achieve where there is a serious variance between the imposable sentence of the country of the offence and the country of the offender. The issue becomes even more complex when there is great difference in the nature of the penalty, as when in lieu of or in addition to imprisonment there is mutilation inflicted;

(b) Lack of a workable arrangement between the countries where demand emanates and the countries providing the "supply" of children giving prime consideration to crimes against children where trafficking is involved;

(c) Lack of a workable arrangement between countries to ensure the protection and safety of child victims of trafficking in the process of repatriation. Where children are victims of trafficking across frontiers, victimization can start with the retrieval of the children from their employers, and continue with the referral to immigration authorities prior to their repatriation, the manner by which the children are transported, their reception by the immigration authorities of their country of origin, and even their release either to their families or to welfare organizations;

(d) Foreigners in countries where there is no extradition treaty act with impunity because of the assurance that they are beyond the reach of the law after leaving the country where the abuse has been committed;

(e) Countries where the commercial abuse of children is not perceived as a problem may not be as concerned in the search for solutions, even if its nationals are participants in child exploitation activities. Eliminating the demand is an often-forgotten facet of child protection. Attention is usually lopsided, focusing on the used rather than the user, seeking solutions addressing the source of supply without corollary measures to eliminate the demand for children;

(f) Advances in the development of modern technology pose a very serious problem to law enforcement in the field of pornography. Anonymity is available on the Internet. A user can manufacture virtually any identity and route from country A, through country B, to country C and then to country A again, where it would be impossible to determine the origin of the first message. The industry is also experiencing a rapid development in cheap, user-friendly encryption software which is employed by child pornographers. Decoding the files is often extremely difficult for law enforcement agencies. An individual may now trade and/or sell images of almost any kind from one end of the world to the other.

86. Even if law enforcement officials discover the image, the ability to distribute it may not be impaired. Once an image is introduced on the Internet, it can be downloaded by any number of users and can be reproduced repeatedly without any loss of quality.

D. Recommendations at the international level

87. The search for solutions cannot be in isolation within the confines of a country, especially where there is cross-border trafficking or difference in nationality between the abused and the abuser. Regional and/or worldwide cooperation will often not only be desirable, but indispensable. At the same time, however, we should not fall into the trap of believing that there can be a single magic formula that can work for all countries. Every country will ultimately have to determine for itself how to remedy its own situation, taking into account all the circumstances peculiar to the country, from causation, to the political, social and cultural background of its peoples, to modes of recruitment, the modus operandi of the abusers, the identification of other countries with which it has links, etc.

88. The following are some recommendations on how cooperative efforts between countries could be carried out:

(a) There must be a determination by a country of the other country or countries with which it has links, either because they are the sending country and the receiving country or because the offenders in one country are usually nationals of another country. Countries with common borders, for instance, would have need for closer coordination in order to prevent trafficking in children;

(b) Having determined the country or countries with which links exist, Governments should explore the possibility of having cooperative arrangements through any of the following:

(i) Synchronization of laws on the elements of the crime against children, on the nature and length of the penalties imposable and on rules of procedure, especially in evidence-taking;

(ii) Arrangements by which abusers in a foreign country may be subject to prosecution either where the offence took place or in the country of the offender. This could be done either through extradition or expansion of jurisdiction through extraterritoriality. With respect to extradition, there should be analysis of how extradition relationships could be effectively designed between nations. We must also take note of the fact that for some States, extradition is an available alternative even without a treaty, but on the basis of the national law of both of the States concerned;

(iii) Negotiation and application of multilateral conventions in regions that share a similar political, legal and social system;

(iv) Submission of requests for mutual judicial assistance in criminal matters, which is allowable in the legal order in virtually all countries;

(c) Quick and accurate exchange of information between countries should be developed with respect to the law enforcement agencies and the judiciary in order to ensure the thorough investigation, prosecution and conviction of perpetrators and the protection of the child victims. The national police should likewise work closely with INTERPOL and immigration authorities to curb trafficking and related activities;

(d) A central registry for missing children should be set up on both a national and a regional basis to facilitate the identification and tracing of the child victims;

(e) Exchange of paedophile lists between different countries should help to prevent the repetition of offences by the same persons, and should be encouraged;

(f) The police, customs officials and postal officials need to coordinate their efforts more closely to curb the circulation of pornographic materials. This entails both bilateral and other arrangements;

(g) States should encourage exchange consultation and training programmes among law enforcement authorities to deal with transnational trafficking in children. For example, one cooperative method of preventing or assisting in combating exploitation of children is the assignment by States of police personnel in countries to which their nationals travel in large numbers in order to track the behaviour of their own nationals where there is a threat to the children of said countries. The repatriation of children to their country of origin should also be safeguarded by cooperation between the relevant agencies so that the children are not further subjected to humiliating and degrading treatment or abuse.